

¹ See 20 C.F.R. §§ 501.2(c) and 501.3.

FACTUAL HISTORY

This case is before the Board for the second time.² In a decision dated December 17, 2002, the Board affirmed the April 7, 2000 decision of an Office hearing representative, terminating appellant's compensation on or after May 13, 1999 due to her accepted employment injuries of cervical and thoracic strains and cervical strain and closed head wound (contusion), sustained on March 28, 1994 and August 5, 1997, respectively,³ on the grounds that there was no residual disability. The Board found that the Office met its burden of proof to terminate appellant's compensation based on the opinion of Dr. Robert M. Yanchus, a Board-certified surgeon and impartial medical specialist, who represented the special weight of the medical evidence. The Board further found appellant's allegations that Dr. Yanchus was biased were unsupported by the evidence of record. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

In a letter dated December 15, 2003, appellant, through her representative, requested reconsideration and submitted a December 7, 2003 report by Dr. Robert Vandrak, a treating Board-certified physiatrist, in support of her request. In his diagnosis, Dr. Vandrak reported appellant was: (1) status post her 1998 employment injury when she sustained a severe right ankle strain/sprain and "subsequent development of post[-]traumatic arthritis;" (2) status post her March 28, 1994 employment injury when she sustained a probable lumbar sprain/strain. Dr. Vandrak reported "residuals complaints of lumbar pain, disc syndrome at L4-5 with note bulging present at this level." He stated that he was unable to say whether the employment injury caused "this abnormality in the lumbar spine;" (3) status post her August 5, 1997 employment injury when she sustained head and neck injuries. Dr. Vandrak opined that she had "cervical sprain/strain with closed[-]head injury with subsequent post[-]traumatic headaches" due to this injury; and (4) "cumulative trauma disorder, exact date of injury not clear. An examination revealed "rotator cuff impingement tend[i]nitis with rotator cuff tendinopathy as well as previous documentation of mild right carpal tunnel syndrome" which he attributed to her repetitive employment duties. He noted "nothing in patient's history to suggest any other cause for these problems." Physical findings revealed degenerative changes in the right ankle and an altered gait. Due to the alteration of her gait, Dr. Vandrak opined that appellant had "a gluteus medius lurch to the right with ambulation." He reported appellant "has abnormalities in the lumbar spine and the cervical spine with tenderness to palpation in the associated paraspinal musculature," which he attributed to her "altered stance phase." He reported a disc bulge at L4-5 based upon an April 16, 2003 magnetic resonance imaging scan, Dr. Vandrak, however, stated that he was unable to state whether the disc bulge was caused by her employment injury. With regards to the cervical spine and her August 5, 1997 employment injury, Dr. Vandrak reported limited range of motion and pain with compression test. Paracervical musculature tenderness was also present. He noted "it is certainly possible with the injury to the head and cervical spine that these findings would be present and would make her more prone to headaches."

² Docket No. 01-1033 (issued December 17, 2002).

³ The Office accepted that appellant sustained cervical and thoracic strains due to her March 28, 1994 employment injury when she was hit from behind by a letter rack. With regards to her August 5, 1997 employment injury, the Office accepted that appellant sustained a cervical strain and a closed head wound (contusion) as a result of a door falling off its hinges and striking her.

By decision dated January 6, 2004, the Office denied modification of its prior decision. The Office noted that Dr. Vandrak's report contained opinions expressed by prior physicians. The Office found Dr. Vandrak's opinion insufficient to create a conflict with the opinion of Dr. Yanchus, and, thus, Dr. Yanchus' opinion constituted the weight of the medical evidence.

LEGAL PRECEDENT

When the Office meets its burden of proof in justifying termination of compensation benefits, the burden of proof shifts back to the claimant to establish the claim of continuing employment-related residuals with probative medical evidence.⁴

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁵

ANALYSIS

As the Board found in its December 17, 2002 decision, the Office met its burden of proof in terminating compensation effective May 13, 1999. Therefore, to establish her entitlement to continuing compensation after May 13, 1999, appellant must submit a probative medical opinion establishing that her condition or disability after May 13, 1999, is causally related to March 28, 1994 and August 5, 1997 employment injuries.

In support of her claim, appellant submitted a report dated December 7, 2003 from Dr. Vandrak which indicated that appellant was status post her March 28, 1994 and August 5, 1997 employment injuries. He reported a "disc syndrome at L4-5 with note bulging present at this level," but was unable to provide an opinion as to whether it was due to the March 28, 1994 employment injury. Regarding her August 5, 1997 employment injury, he diagnosed "cervical sprain/strain with closed[-]head injury with subsequent post[-]traumatic headaches." He also diagnosed "cumulative trauma disorder, exact date of injury not clear." Dr. Vandrak provided physical findings which included limited range of motion and pain in the cervical spine. He noted that appellant's cervical spine was tender "to palpation in the associated paraspinal musculature" He opined these conditions were caused by her altered gait and "stance phase," which was a result of her right ankle problem. Although Dr. Vandrak diagnosed subsequent head injury with post-traumatic headaches, the Board notes that the Office accepted appellant's claim for cervical and thoracic strains and closed head wound (contusion). Where appellant claims that a condition not accepted or approved by the Office was due to her employment injuries, she bears the burden of proof to establish that the condition is causally related to the

⁴ See *John F. Glynn*, 53 ECAB ____ (Docket No. 01-1184, issued June 4, 2002).

⁵ *Id.*

employment injury.⁶ The Board finds that although Dr. Vandrak diagnosed chronic headaches which he attributed to her accepted August 5, 1997 employment injury, he failed to offer any medical rationale for his stated conclusion or provide a discussion about how the condition was causally related to the accepted August 5, 1997 employment injury.⁷ Thus, Dr. Vandrak's opinion is insufficient to establish a causal relationship between her chronic headaches and her August 5, 1997 employment injury. With regards to her accepted employment conditions of cervical and thoracic strains and closed head wound (contusion), Dr. Vandrak did not address the relevant issue of whether appellant remained disabled after May 13, 1999 due to these accepted employment injuries. As noted previously, medical evidence must be in the form of a reasoned opinion by a qualified physician based upon a complete and accurate factual and medical history.⁸ A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.⁹ As Dr. Vandrak failed to provide any medical rationale which supports that appellant suffered a disability after May 13, 1999 due to her accepted employment injuries, his report is of diminished probative value. As appellant has submitted no probative medical evidence establishing that she continues to be disabled from employment-related conditions, she has not met her burden of proof to establish entitlement to compensation after May 13, 1999, the date the Office terminated her compensation benefits.

CONCLUSION

The Board finds that appellant has not established that she is entitled to continuing compensation benefits on or after May 13, 1999 causally related to her March 28, 1994 and August 5, 1997 employment injuries.

⁶ *Jaja K. Asaramo*, 55 ECAB ____ (Docket No. 03-1327, issued January 5, 2004).

⁷ *Jacqueline L. Oliver*, 48 ECAB 232 (1996).

⁸ *Kathleen M. Fava (John F. Malley)*, 49 ECAB 519 (1998).

⁹ *Jean Culliton*, 47 ECAB 728 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 6, 2004 is affirmed.

Issued: January 11, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member